TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

~~No. 730~~ 19

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, PETITIONER

vs.

CHARLES BENSON

~~No. 781~~ 20

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, AND J. B. KNUDSEN, PETITIONERS

vs.

CHARLES BENSON

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 12, 1931
CERTIORARI GRANTED MARCH 16, 1931

(35652, 35653)

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LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, PETITIONER

vs.

CHARLES BENSON

No. 731

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, AND J. B. KNUDSEN, PETITIONERS

vs.

CHARLES BENSON

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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A [Caption omitted.]
1 [Caption omitted.]

2 In United States District Court for the Southern District of Alabama

CHARLES BENSON, COMPLAINANT

VS.

LETUS N. CROWELL, DEPUTY COMMISSIONER, ET AL., RESPONDENTS

In Equity No. 125

Bill of complaint.

Filed Jan. 24, 1929

To the Honorable ROBERT T. ERVIN, *Judge of the United States District Court for the Southern District of Alabama, in Equity:*

Now comes Charles Benson, of Mobile, in the couty of Mobile, State of Alabama, and files this bill of complaint against Letus N. Crowell, Esq., deputy commissioner for the seventh compensation district, appointed and acting under and by virtue of the act of Congress known as the longshoremen's and harbor workers compensation act, and against J. B. Knudsen, and respectfully shows unto your honor as follows:

1. That the complainant Charles Benson is over twenty-one (21) years of age, and is a resident of the city and county of Mobile, in the State of Alabama, and is the sole proprietor of and does business under the name and style of Benson Sheet Iron & Metal Works.

2. That the respondent Letus N. Crowell is over twenty-one
3 (21) years of age, and is the deputy commissioner in and for the seventh compensation district, established pursuant to the act of Congress approved March 4th, 1927, and known as the longshoremen's and harbor workers' compensation act, and that the respondent J. B. Knudsen is over the age of twenty-one (21) years, and is a resident of the city and county of Mobile, in the State of Alabama, and that the county of Mobile in the State of Alabama is situate within the said seventh compensation district.

3. That on the 4th day of July, 1927, the said J. B. Knudsen, while standing on a derrick barge belonging to this complainant and then moored in the Mobile River, a navigable stream, at a point in said stream opposite to the city of Mobile in Mobile County, Alabama, was struck, knocked down, and seriously injured by certain tackle which fell or gave away by reason of the breaking of that portion of the wharf to which it was fastened, and that thereafter on the 31st day of May, 1928, the said J. B. Knudsen filed with the said deputy commissioner a claim against the complainant, in which he demanded compensation on account of said injuries under the longshoremen's and harbor workers' compensation act. A copy of the claim filed by the said J. B. Knudsen as aforesaid is hereto attached,

marked "Exhibit A," and now referred to. Thereafter, on the 9th day of June, 1928, this complainant filed with the said deputy commissioner his answer to said claim of the said J. B. Knudsen, a copy of which said answer is hereto attached, marked "Exhibit B," and made a part hereof. Thereafter the deputy commissioner ordered a hearing in respect to the said claim and on, to-wit, the 22nd day of November, 1928, the matter of said claim was heard at Mobile, Alabama, before the said Letus N. Crowell as deputy commissioner of the said seventh compensation district, and after said hearing,

4 and on December 26th, 1928, the said deputy commissioner filed in his office an award and compensation order by which this complainant was required to pay compensation to the said J. B. Knudsen for the disability which he had incurred by reason of said injury which said award and compensation order, if valid, would become effective as of the date when the same was filed, viz: On the 26th day of December, 1928. A copy of said award is hereto attached, marked "Exhibit C," and here referred to.

4. This complainant alleges, however, that the said award and compensation order was not in accordance with law, for the reason that the said J. B. Knudsen was not at the time of said injury an employee of the complainant, nor was the matter of his claim against this complainant within the jurisdiction of the said deputy commissioner. The said J. B. Knudsen had previously cut a cable on said derrick barge, and on the date of his injury aforesaid he returned to the said derrick barge for the purpose of splicing said cable, but not as an employee of this complainant, and it was while he was making preparation to splice that cable that he was injured.

Complainant alleges that when said Knudsen cut said cable he was not in the employ of complainant, unless it was in the capacity of member of the crew of said derrick barge, in which capacity he served until, to-wit, June 15, 1927, when he left complainant's employ. Said cable was cut by said Knudsen during the period of his employment as a member of the crew of said derrick barge, but after said derrick had been loaned by complainant to Knudsen and/or one Beauregard Roberts, as an act of friendship to enable them to do certain work of their own, and complainant claimed said cable was erroneously or improperly cut and that it was by reason of said cutting rendered less valuable or useful to complainant, and that therefore said Roberts and/or Knudsen was or were under an obli-

5 gation to have said damage to the cable repaired by splicing, and complainant avers that said Knudsen, on the occasion of his said injury on July 4, 1927, went on board of said derrick for the purpose of splicing, and was preparing to splice said cable at the instance of said Roberts and/or as an act of reparation for the damage done or claimed to have been done complainant in its cutting and without any agreement with this complainant, express or implied, that said Knudsen would be paid by this complainant for doing so, but the complainant further avers that if he be mistaken

in the allegation that there was no implied agreement that said J. B. Knudsen would be compensated by complainant for splicing said cable, then he alleges the fact to be that said J. B. Knudsen undertook to do said work either as an independent contractor or as a member of the crew of said derrick.

5. This complainant alleges that since the filing by the said J. B. Knudsen of his claim against this complainant for compensation under the said longshoremen's and harbor workers' act, the said J. B. Knudsen, on, to-wit, July 2, 1928, filed a suit at law in the Circuit Court of Mobile County, Alabama, against this complainant, claiming $15,000.00 damages for the identical injury on which his said claim under the longshoremen's and harbor workers' compensation act is based, and that said suit is still pending in said court. This complainant alleges that he had not at the time of Knudsen's said injury secured the payment of compensation to his employees as required by section 32 of said longshoremen's and harbor workers' compensation act, and that by the filing of said suit, the said J. B. Knudsen did elect not to maintain his claim for compensation under said longshoremen's and harbor workers' compensation act, but to maintain his action at law for damages on account of said injury, and that therefore, the said J. B. Knudsen is not now entitled to any compensation under said longshoremen's and harbor workers' compensation act.

6 6. Under the terms of the award aforesaid, made by the respondent deputy commissioner, this complainant will be required, unless payment of the amounts required by said award be stayed, pending final decision in this cause, to presently pay to the said J. B. Knudsen a large sum of money, to-wit, $1,538.40, or more, as accrued compensation, and additional compensation thereafter of $19.23 per week until full payment of the amount of said award, and complainant alleges that the said J. B. Knudsen is utterly insolvent and has no assets or property of any kind or character, and that if this complainant should pay the aforesaid accrued compensation which he is required to pay by the terms of said award, he will be unable to recover such accrued compensation or any part thereof, and will sustain irreparable loss and damage.

Prayer for process

Wherefore, the premises considered, this complainant prays that the said Letus N. Crowell, deputy commissioner for the seventh compensation district, established under and pursuant to the longshoremen's and harbor workers' compensation act, and the said J. B. Knudsen may be made parties defendant to this bill of complaint, and that process in the usual form issue to and be served upon them and each of them requiring them to appear and make answer to this bill of complaint within the time and in the manner required by law and the rules of this honorable court.